IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1955

NO. 400

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY; CHICAGO & EASTERN ILLINOIS RAILROAD COMPANY; CHICAGO AND NORTH WESTERN RAILWAY COMPANY; AND OTHERS,

Appellants,

vs.

UNITED STATES OF AMERICA; INTERSTATE COMMERCE COMMISSION; C. & R. TRANS., INC.; AND OTHERS,

Appellees.

Appeal from the District Court of the United States for the Eastern District of Missouri, Eastern Division

---

APPELLANTS' PETITION FOR REHEARING

Appellants respectfully petition the Court for a rehearing of the judgment herein, whereby the Court granted the motions to affirm and affirmed the judgment of the District Court, upon the following grounds:

1.

The Court's judgment leaves in full effect in the District Court's opinion a statement, necessary for the District Court's decision, which is in direct conflict with five decisions of this Court. The point of conflict and the consequences are of major importance.

As the basis for distinguishing the instant case from *Alton Railroad Co.* v. *United States,* 315 U. S. 15, the District Court said in respect to the Commission's order in the *Alton* case (130 F. Supp. pp. 78-79; Statement as to Jurisdiction p. 23):

> "* * * the order of the Commission directly affected the transportation situation by granting *new operating rights,* which threatened the railroads' traffic. In the present order the railroads are not threatened with any new competition from new operating rights which they have not been subjected to in the past." (Emphasis is District Court's.)

This construction of the *Alton* case is wholly at odds with the plain holding in the *Alton* case, which had to do only with the confirmation of *grandfather,* that is, *existing,* not new, operating rights. Moreover, the *Alton* case has been the one case regularly cited by this Court for precisely the opposite of what the District Court said about it. Thus the *Alton* case was cited for authority that "grandfather" motor carrier rights must be so limited as to assure no more than "substantial parity between future operations and prior *bona fide* operations" in *United States* v. *Carolina Freight Carriers Corp.,* 315 U.S. 475, 481; *Noble* v. *United States,* 319 U.S. 88, 92; *Crescent Express Lines* v. *United States,* 320 U.S. 401, 409; and *Barrett Line* v. *United States,* 326 U.S. 179, 193.

The District Court failed to follow the above-cited decisions of this Court, and made that failure an indispensable part of its decision. Now this Court, without opinion, affirms the failure of the District Court to follow this Court's decisions.

2.

The Court's judgment upsets a rule that has been followed and depended upon by counsel ever since the decision of the *Alton* case in 1942, a rule relied upon in the instant

case. The *Alton* case (315 U.S. 15, 19-20) holds that the allegations of paragraph 20 of appellants' complaint (Statement as to Jurisdiction p. 38) are sufficient to establish the status of party in interest. For the proof as to interest in the *Alton* case was exactly that stated in paragraph 20, and paragraph 20 was copied from the proof in the *Alton* case. Surely counsel ought to be able to rely upon the stability of a decision of this Court on such an important matter of procedure, particularly a decision that has been cited with approval so often by this Court.

3.

On the plain record the Court permits Fruehauf Trailer Company, already in control of Denver-Chicago Trucking Company with coast to coast rights, to acquire in this proceeding control of several other large motor carriers without complying with section 5(2) of the Interstate Commerce Act, 49 U.S.C. 5(2) It does this by holding that the only parties protesting such a violation of section 5(2) are not parties in interest. It is impossible to understand how there could be more legally interested parties than railroads competing for traffic with Denver-Chicago and with the other large motor carriers here involved that are all now by the Commission's unlawful order placed under common control.

Respectfully submitted,

JOSEPH H. HAYS,
AMOS M. MATHEWS,
280 Union Station Building,
Chicago 6, Illinois,
Attorneys for Appellants.

A. E. SCHOENBECK,
JAMES W. NISBET,
CARL HELMETAG, JR.,
EUGENE E. ANDERSON, JR.,
J. RAYMOND CLARK,
Of Counsel for Appellants.

Certificate of Counsel

I, Amos M. Mathews, counsel for the appellants, do hereby certify that the foregoing petition for rehearing is presented in good faith and not for the purpose of delay.

AMOS M. MATHEWS